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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,231

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Daniel D. Coppens

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EXAMINER

SAFAVI, MICHAEL

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3637

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/633,231	Applicant(s) COPPENS ET AL.	
	Examiner Michael Safavi	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-17, 19-26, 28-36 and 38-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-11, 13-16, 20, 31, 32, 36 and 38-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 19, 21-26, 28-30 and 33-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 17, 2008 has been entered.

Election/Restrictions

Claims 1-11, 13-16, 20, 31, 32, 36, and 38-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of the invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 29, 2005.

Applicants' remarks presented on page 8 of the response of November 17, 2008 have been reviewed. However, claims 41-46 appear directed to a non-elected species of the invention. Thus, claims 41-46, along with claims 1-11, 13-16, 20, 31, 32, 36, and 38-40, and 47, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of the invention. The elected species of support device of Fig. 10 does not possess "[an] indexing groove...[as] a continuous groove that runs the length or width of the device". Such might be directed to for example, the nonelected species of Fig. 11A/11B.

Applicants' argument, found within the second paragraph on page 8 of the response, have been noted. However, the Office action of May 15, 2008 had set forth an

explanation of why claims 41-46 have been withdrawn from further consideration as to the merits.

Response to Amendment

Applicants' argument found within the second paragraph on page 9 of the response does not appear accurate. The Office action of May 15, 2008 does not present a new ground of rejection that had not been raised previously. The rejections found within the Office action of May 15, 2008 have been set forth in the immediately prior Office action of August 21, 2007. Therefore, the finality of the previous Office action of May 15 2008 is not considered premature. In any event, Applicants' argument found within the third paragraph on page 9 of the response appears as moot in view of Applicants' having filed a Request for Continued Examination with Applicant having been entitled to file any arguments and amendments upon the submission of the instant request for continued application..

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 21-26, 28, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver et al. '116 in view of Wark et al. '758.

Oliver et al. '116 discloses, Figs. 1 and 2, a patient support device having at least one index positioning means 15 on a first side and at least one index positioning means 15 on a second side. The sidewalls can be seen as chamfered. An accessory device removably secured to the support is as shown in Fig. 4. An accessory device adaptor is at 20 with an attachment feature 30/40, (in the form of a clamp, cam lock, interference fit clip, pin, post and bar), on the first end of the adaptor for mateably joining the adaptor to the at least one positioning feature on the first side, an element 25 on the second end in contact with the second side of the patient support device, and an attachment means, (as can be seen in Fig. 4), for mateably joining and securing an accessory device to the accessory device adaptor. Oliver et al. does not appear to specifically disclose a “wherein the at least one positioning feature on the first side is asymmetrically spaced from the at least one positioning feature on the second side such that the area directly opposing the at least one positioning feature on the first side and the at least one positioning feature on the second side is free of a positioning feature”.

However, Wark et al. '758 teaches providing an index positioning means along one or both side edges of a patient support device, col. 4, lines 63-67, (see also, col. 5, lines 12-15). Further, it has been well established that omission of an element and its function is obvious if the function of the element is not desired. See *Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989). See also *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Therefore, to have formed the Oliver et al. '116 support device with a given longitudinal positioning means along only one edge, (i.e., establish a positioning means

15 on only one edge alternating from one side edge to the other along the length of the support device), thus providing the necessary positioning means along either side of the support without undue work on the table stock, would have been obvious to one having ordinary skill in the art at the time the invention was made as is taught by Wark et al. '758. The resulting support of Oliver et al. '116 would thus possess at least one index positioning means 15 on a first side being asymmetrically spaced from an at least one index positioning means 15 on the second side "such that the area directly opposing the at least one positioning feature on the first side and the at least one positioning feature on the second side is free of a positioning feature".

Claims 17, 19, 21-26, 28, 29, 30, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO Publication WO 01/35828, (WIPO '828) in view of Oliver et al. '116 and in view of Wark et al. '758.

WIPO '828 discloses, Figs. 1 and 4, a patient support device having at least one index positioning means, (any portion or extent of the edge), on a first side and at least one index positioning means, (any portion or extent of the edge), on a second side with the at least one index positioning means on a first side being asymmetrically spaced from an at least one index positioning means on the second side, (e.g., one portion of the edge on a first side is asymmetrically spaced from one offset portion or extent on a second side). The sidewalls can be seen as chamfered with the top surface extending laterally beyond at least one sidewall to form a lip. As such, the indexing means is

formed or “contained” in the lip. An accessory device removably secured to the support is at 18/20.

Arguments to each of Oliver et al. ‘116 and Wark et al. ‘758 can be found above. To have provided the WIPO ‘828 support table 10 with index positioning means in the form of a notch along opposite edges thereof as well as provide for both an accessory attachment means and an accessory device, thus allowing for attachment of a patient restraint accessory in an indexing approach, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Oliver et al. ‘166.

Further, Wark et al. ‘758 teaches providing an index positioning means along one or both side edges of a patient support device, col. 4, lines 63-67. And, it has been well established that omission of an element and its function is obvious if the function of the element is not desired. See *Ex parte Wu*, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989). See also *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Therefore, to have further modified the resulting positioning means so as to have a notch along only one edge, (i.e., establish a positioning means 15 on only one edge alternating from one side edge to the other along the length of the support device), thus providing the necessary positioning means along either side of the support without undue work on the table stock, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Wark et al. ‘758 particularly since it has been well established that omission of an element and its function is obvious if the function of the element is not desired. See *Ex parte Wu*, 10 USPQ 2031

(Bd. Pat. App. & Inter. 1989). See also *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). The resulting support of WIPO '828 would thus possess at least one index positioning means 15 on a first side and at least one index positioning means 15 on a second side with the at least one index positioning means 15 on a first side being asymmetrically spaced from an at least one index positioning means 15 on the second side "such that the area directly opposing the at least one positioning feature on the first side and the at least one positioning feature on the second side is free of a positioning feature".

Response to Arguments

Applicant's arguments filed November 17, 2008 have been fully considered but they are not persuasive. As for Applicants' arguments within the paragraph bridging pages 10 and 11 of the response, it is not seen how Oliver et al. would serve to "teach away from the present invention". Oliver et al. provides for an indexing means to allow for positioning of an accessory device. Therefore Oliver et al. does not teach away from the present invention. Further, Wark et al. is directed to a planar support member apparatus incorporating a positioning means in the form of indexing holes 24 that "are used in the art for workpiece transport purposes and to position components within an assembly apparatus. Wark et al. goes on to state that "the flanges 20 and 22 might be provided with board position indicators such as notches 25 (broken lines), holes 27 of a different shape than indexing or tooling holes 24, or segments 29 of a different material detectable by a proximity sensor so that the presence and exact location of a particular

board (especially useful on a multi-board carrier) is easily determinable". As such Wark et al. would serve to teach application of indexing means along the edges of a planar support member apparatus for purposes of precise positioning of a device. Thus, the examiner's assessment that Wark et al. teaches providing an index positioning means along one or both side edges of a patient support device is not in error as Wark et al. deals with appropriate positioning of components upon a support.

As for Applicants' remarks within the first full paragraph on page 11 of the response, the instant invention can certainly be considered as removing an element and its function. The Oliver et al. support device positioning features would be eliminated as unnecessary. A positioning feature is eliminated while one remains to allow for attachment of a device. One having ordinary skill in the art would realize that by providing alternating, or offset, "positioning means" along the sides of the Oliver et al. support member the position of an accessory device can be indexed along either side of the support member while eliminating the need for fabricating what would amount to twice as many "positioning means".

The examiner's remarks with respect to the rejection of claims over Oliver et al. in view of Wark et al. can be equally applied to the rejection of claims 17, 19, 21-26, 28, 29, 30, and 33-35 over WIPO '828 in view of Oliver et al. and Wark et al.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the

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application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Safavi/
Primary Examiner, Art Unit 3637

M. Safavi
January 17, 2009